



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
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IN REPLY
REFER TO

J-33
PROCLTR 2002-09

JUN 20 2002

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

SUBJECT: Implementation of Section 811 of the Fiscal Year 2002 DoD Authorization Act, Regarding Purchases from Federal Prison Industries (Defense Logistics Acquisition Directive (DLAD) 8.602; 10.001; 19.502-1; 52.208-9001; 52.219-9001)

The purpose of this PROCLTR is to supplement Defense Federal Acquisition Regulation Supplement (DFARS) implementation, via Interim Rule dated April 26, 2002, of Section 811 of the National Defense Authorization Act, FY 2002, regarding purchases from Federal Prison Industries (FPI). Although our original guidance on this subject (PROCLTR 2002-05, April 1, 2002) expired upon publication of the Interim Rule, certain issues addressed therein were not specifically included in the DFARS coverage. The DLAD regulatory language provided in the Attachment is intended to fill these gaps.

In the interest of efficiency and streamlining, use of a solicitation/request for quotation as a market research technique for the conduct of comparability determinations is permitted up to the simplified acquisition threshold, so long as two conditions are met. First, FPI shall be solicited. Second, notice shall be provided (via solicitation provision or otherwise) to all entities solicited that, if the FPI item is comparable to items from private-sector offerors, FPI is still the mandatory source to whom award must be made.

Once again, in order to ensure consistency of approach throughout the Agency, no local supplementation of this policy is authorized. Local implementing procedures are authorized. The point of contact is Ms. Mary Massaro, J-336, who can be reached at DSN 427-1366 ((703) 767-1366), or via email addressed to mary_massaro@hq.dla.mil.

CLAUDIA S. KNOTT
Executive Director
Logistics Policy and Acquisition Management

Attachment



SUBPART 8.6 - ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC.

8.602 Policy.

(a) The contracting officer must use the results of market research (see 10.001(a)(2)(93)) to determine the comparability of the FPI product, considering all three areas of price, quality, and time of delivery. In other than automated acquisitions, the contracting officer shall document in writing the basis for the comparability determination, to include the significance of each factor under the circumstances of the acquisition. The comparability determination must be retained in the contract file. The contracting officer is strongly encouraged to consult with counsel on acquisitions stemming from such comparability determinations.

(i) (90) Use the provision at 52.208-9001, Acquisition of Federal Prison Industries Items, for acquisitions valued below the simplified acquisition threshold that involve items listed on the FPI Schedule when the solicitation will also serve as a market research tool. FPI will receive an order if its items are found comparable to items from private sources.

(ii) (90) If, despite the comparability of the FPI product, the contracting officer nevertheless concludes that purchase of the item from a private-sector source is in the best interests of the Government (e.g., for readiness or industrial-base reasons), a clearance may be pursued from FPI in accordance with FAR 8.605.

(iii) (90) Competitive buys are subject to set-aside requirements, except that FPI will be solicited and permitted to compete, and could still receive the award, in acquisitions of these items that are otherwise set aside for small business participation. Small business concerns must be notified of this possibility when set-asides are used under these circumstances. See 19.502-1(b)(90).

(a) (90) *****

PART 10 - MARKET RESEARCH

10.001 Policy.

(a)(2)(93) Private-sector entities contacted during market research pertaining to FPI product comparability must be notified that information they provide will be used by the contracting officer in comparing their products in terms of price, delivery, and quality with items listed on the FPI Schedule. They must be made aware that, depending on the outcome of the comparability determination, FPI could still receive the award.

SMALL BUSINESS PROGRAMS

SUBPART 19.5 - SET-ASIDES FOR SMALL BUSINESS

19.502-1 Requirements for Setting Aside Acquisitions.

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19.502-1 Requirements for Setting Aside Acquisitions.

(b) (90) Notwithstanding FAR 19.501(a) and 19.502-1(b), Federal Prison Industries (FPI) may also compete for, and could receive award of, set-aside acquisitions of items listed on the FPI Schedule. Accordingly, insert the provision at 52.219-9001, Set-Asides of Acquisitions of Items Listed in the

Schedule of Products Made in Federal Penal and Correctional Institutions, in acquisitions of such items whenever a comparability determination leads to a competitive acquisition and a FAR set-aside clause is used.

PART 52 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 52.2 - TEXTS OF PROVISIONS AND CLAUSES

52.208-9001 Acquisition of Federal Prison Industries Items

52.219-9001 Set-Asides of Acquisitions of Items Listed in the Schedule of Products Made in Federal Penal and Correctional Institutions

SUBPART 52.2 - TEXTS OF PROVISIONS AND CLAUSES

52.208-9001 Acquisition of Federal Prison Industries Items.

As prescribed in 8.602(a)(1)(90), insert the following provision:

ACQUISITION OF FEDERAL PRISON INDUSTRIES ITEMS (JUNE 2002) - DLAD

For items listed on the Federal Prison Industries (FPI) Schedule of Products Made in Federal Penal and Correctional Institutions, issuance of this solicitation will constitute market research. Price, quality, and delivery will be evaluated both as part of the contracting officer's award decision and as the comparability determination required by Defense Federal Acquisition Regulation Supplement (DFARS) 208.602. The award evaluation and comparability determination will be conducted using the award criteria contained in this solicitation. FPI will receive an order to fulfill this requirement if its offer is comparable to those from private-sector sources. By signing an award resulting from this solicitation, the contracting officer signifies that a comparability determination has been made.

(End of Provision)

52.219-9001 Set-Asides of Acquisitions of Items Listed in the Schedule of Products Made in Federal Penal and Correctional Institutions.

As prescribed in 19.502-1(b)(90), insert the following provision.

SET-ASIDES OF ACQUISITIONS OF ITEMS LISTED IN THE SCHEDULE OF PRODUCTS MADE IN FEDERAL PENAL AND CORRECTIONAL INSTITUTIONS (JUNE 2002) - DLAD

For items listed on the Schedule of Products Made in Federal Penal and Correctional Institutions, when a comparability determination leads to a competitive acquisition, set-asides may be used. However, notwithstanding the inclusion of any set-aside provision or clause in this solicitation, FPI shall also be permitted to compete for, and could receive award of, the acquisition.

(End of provision)